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DEPARTMENT FOR EUR/AGS AND L/LEI (KEN PROPP)
DOJ FOR BRUCE SWARTZ AND LINDA MCKINNEY
USEU FOR MARK RICHARD

E.O. 12958: N/A

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SUBJECT: GERMAN GOVERNMENT SENDS LEGISLATION TO PARLIAMENT
TO APPROVE U.S.-GERMAN JUDICIAL COOPERATION TREATIES

REF: BERLIN 3540

Summary

¶1. (U) On December 13, the German cabinet approved enabling legislation for five treaties on German-U.S. judicial cooperation in criminal matters, paving the way for their ratification. As a next step in the ratification process, both houses of the German Parliament (the Bundestag and Bundesrat) must approve the legislation, which will then be transmitted to the German Federal President for his signature. The treaties will significantly improve and expand judicial cooperation. End Summary.

Background -- Current Legal Situation

¶2. (U) Currently, an extradition treaty signed in 1976 and a supplemental treaty of 1986 provide the legal basis for extradition between Germany and the U.S. in connection with criminal prosecutions or enforcement of criminal penalties. Legal assistance requests for evidence to be used in criminal proceedings are handled by way of letters rogatory.

MLAT

¶3. (U) The bill on German-U.S. judicial cooperation approved by the German cabinet and sent on to the parliament enables the ratification of five treaties dealing with both legal assistance and extradition. First, the bill would ratify the bilateral Mutual Legal Assistance Treaty in Criminal Matters (MLAT) that was signed between the United States and Germany on October 14, 2003 after over twenty years of negotiations. This treaty is designed to provide the legal basis for the formal procedures by which the two countries afford each other legal assistance in criminal matters. The new MLAT will not only establish a legal obligation to afford each other legal assistance, but also will allow a variety of new types of legal assistance, such as telecommunication surveillance and undercover investigations. Moreover, the agreement breaks new ground in including detailed provisions regulating the use of information in order to comply with German data protection concerns (Ref) without compromising

the flexibility of U.S. law enforcement.

U.S.-EU Agreement

¶4. (U) The bill also approves the Agreement on Extradition between the European Union and the United States, as well as the Agreement on Mutual Legal Assistance between the European Union and the United States, which were signed on June 25, 2003. These post-9/11 agreements signify a notable advancement in law enforcement cooperation with the entire EU. The agreements are designed to speed up and simplify the extradition process, enhance grounds for allowing extradition, and expand legal assistance in criminal matters.

Key provisions in the mutual assistance area include mechanisms to facilitate the exchange of banking information between investigating authorities and for using new techniques, including joint investigative teams.

Supplementary Treaties

¶5. (U) Finally, the bill will approve two supplementary implementing instruments on extradition and on legal assistance that were negotiated as a result of the two U.S.-EU agreements. Since the two U.S.-EU agreements were formally concluded between the European Union and the United States, but are applied in bilateral relationships between individual EU member states and the U.S., bilateral implementing agreements with each EU member state had to be negotiated, taking into account pre-existing bilateral

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provisions. Such supplemental treaties between Germany and the U.S. were signed on April 18, 2006. The supplemental treaty to the bilateral extradition treaty adds the provisions of the U.S.-EU extradition agreement to the existing bilateral agreement. Similarly, the supplemental treaty to the new bilateral MLAT will amend the MLAT to bring it into compliance with the provisions of the U.S.-EU legal assistance agreement.

Next Steps

¶6. (SBU) The bill must be approved by the German Parliament (Bundestag and Bundesrat) and signed by the Federal President. Parliamentary approval is expected in early 2007.

According to the official explanatory commentary that accompanied the legislative package, the ratification process for the U.S.-EU agreement could take considerable time because the necessary domestic procedures have to be completed in all participating EU member states. According to Holger Karitzky, of the International Criminal Law Office of the German Federal Ministry of Justice, even though Germany has wrapped all of the treaties into one legislative package, the MLAT and the U.S.-EU agreement (which presumably will take much longer to ratify) can enter into force independently of each other and at different times. The supplemental treaty to the MLAT will enter into force on the date of entry of the MLAT. This will ensure that legal assistance requests can be processed according to the new legal basis as soon as possible.

KOENIG